

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT BARBERA,

Plaintiff,

-against-

CBS INTERACTIVE INC.,

Defendant.

Index No.: 1:19-cv-4298 (LTS)

ANSWER TO COMPLAINT

ECF Case

Defendant CBS Interactive Inc. (“Defendant”), for and as its Answer to the Complaint filed by Plaintiff (ECF No. 1), answers and alleges as follows:

NATURE OF THE ACTION

1. Defendant admits that this purports to be an action for copyright infringement under Section 501 of the Copyright Act, and that Plaintiff seeks monetary relief, but denies that Plaintiff is entitled to any such relief. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1, and on that basis denies them.

JURISDICTION AND VENUE

2. Paragraph 2 asserts a legal conclusion to which no response is required. To the extent a response may be required, Defendant does not contest the jurisdiction of this Court.

3. Defendant admits that it transacts business in New York. The remaining allegations of this paragraph assert a legal conclusion to which no response is required. To the extent a response may be required, Defendant does not contest that this Court has personal jurisdiction.

4. Paragraph 4 asserts a legal conclusion to which no response is required. To the extent a response may be required, Defendant does not contest the venue of this Court.

PARTIES

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and on that basis denies them.

6. Defendant admits the allegations of Paragraph 6.

STATEMENT OF FACTS

7. Defendant admits that the Complaint contains an Exhibit A and respectfully refers to that Exhibit for the contents thereof. Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7, and on that basis denies them.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8, and on that basis denies them.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, and on that basis denies them.

10. Defendant admits that an article entitled “Best Celebrity Instagram Photos Tonight: Justin Bieber and Willam” appeared on the www.idaily.com website on or about March 13, 2019, and that article contained an in-line link to an Instagram page that featured the Photograph. Defendant further admits that the Complaint contains an Exhibit B, denies that Exhibit B contains a true and correct copy of the article, and respectfully refers to that Exhibit for the contents thereof. Defendant denies the remaining allegations of Paragraph 10.

11. Defendant admits that it did not directly license the Photograph from Plaintiff. Defendant denies the remaining allegations of Paragraph 11.

CLAIM FOR RELIEF

12. Defendant incorporates its responses to the allegations in Paragraphs 1 through 11, as if set forth fully herein.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

GENERAL DENIAL

Each numbered paragraph in this Answer responds to the identically numbered paragraph in the Complaint. Defendant denies all allegations, declarations, claims or assertions in the Complaint that are not specifically admitted in this Answer.

DEFENSES

By alleging the separate and additional defenses set forth below, Defendant is not in any way agreeing or conceding that it has the burden of proof or the burden of persuasion on any of these issues.

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. On information and belief, Plaintiff's claim is barred in whole or in part to the extent any copyright registration asserted by Plaintiff as covering the photograph in suit is invalid and/or unenforceable.

THIRD DEFENSE

3. Plaintiff's claim is barred in whole or in part by the doctrine of fair use.

FOURTH DEFENSE

4. Plaintiff's claim is barred in whole or in part by an express or implied license.

FIFTH DEFENSE

5. Plaintiff's claim is barred in whole or in part by the doctrine of unclean hands.

SIXTH DEFENSE

6. Plaintiff's claim is barred in whole or in part by the doctrines of estoppel or waiver.

SEVENTH DEFENSE

7. Plaintiff's claim is barred in whole or in part by Plaintiff's acquiescence or consent.

EIGHTH DEFENSE

8. Plaintiff's claim is barred in whole or in part because any use of the image in suit by Defendant was through in-line linking or embedding.

NINTH DEFENSE

9. Plaintiff's claim is barred, in whole or in part, by Section 512 of the Digital Millennium Copyright Act.

TENTH DEFENSE

10. Plaintiff's claim is barred in whole or in part by the First Amendment to the United States Constitution.

ELEVENTH DEFENSE

11. Plaintiff's claim is barred, in whole or in part, because Plaintiff suffered no damages as a result of any conduct by Defendant.

TWELFTH DEFENSE

12. Plaintiff's claim is barred in whole or in part because Plaintiff has failed to mitigate damages.

ADDITIONAL DEFENSES

Defendant hereby gives notice that, due to its incomplete knowledge as to the matters set forth in the Complaint, it is unable to determine whether it has additional defenses not expressly enumerated in the preceding paragraphs or elsewhere in this Answer. Defendant thus reserves its right to amend its Answer, to assert additional defenses and to rely upon those additional defenses to the extent they become available or apparent during discovery or further proceedings in this action.

JURY DEMAND

Defendant demands a trial by jury of all issues triable by jury.

WHEREFORE, Defendant respectfully requests that:

- a. Plaintiff's Complaint be dismissed in its entirety with prejudice;
- b. Defendant be awarded its costs, including reasonable attorneys' fees; and
- c. Such other relief as the Court deems just and proper.

Dated: June 4, 2019
New York, New York

Respectfully submitted,

BALLARD SPAHR LLP

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Attorneys for Defendant CBS Interactive Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2019, I caused a true copy of the **ANSWER TO COMPLAINT** to be served via ECF upon all counsel of record.

s/Robert Penchina
Robert Penchina